

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25251
Docket Number MW-25336

Marty E. **Zusman**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**
(Southern Pacific Transportation Company
(Eastern Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The sixty (60) **work** days of suspension imposed upon Machine Operator G. L. Burks for alleged violation of "**Rule M**" was without just and reasonable cause and in violation of the Agreement (System File **MW-82-157/355-52-A**).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered including trailer and overtime pay.

OPINION OF BOARD: Claimant G. L. Burks was assigned to Tie Gang #1 at Baldwin, Louisiana during the week of April 12th through 16th, 1982, installing cross ties.' On or about April 13th or 14th, Claimant believed he had sustained a **work** related injury. He continued to work the remainder of the week and again believed on Friday, April 16th that he had further damaged his right shoulder. As his rest days were April 17th and 18th, he drove 585 miles back to his San Antonio residence, where on Monday, April 19th, a physician confirmed the injury. The Organization maintains that Claimant informed District Manager D. F. Brown that he had sustained an injury and **would** be unable to "report for duty until released by his physician'.

A formal hearing was held on July 22, 1982 in Lafayette, **Louisiana** and the Claimant was found in violation of Rule M which reads in part:

"Rule M. Every personal injury suffered by an employe... must be reported without delay to his immediate supervisor prior to completion of duty...*.

With respect to the evidence in the case at bar, a review of the record as handled on property shows sufficient substantial evidence to warrant the conclusion that Claimant delayed in making a report of injury. This Board firmly holds that the record unequivocally documents that the Claimant is guilty as charged.

The Organization raises important issues of due process and this Board has carefully reviewed these issues. We find that in the instant case they are not controlling. Although the hearing was held 585 miles away from Claimant's home, there was sufficient time (55 days), in Carrier notice, to develop other arrangements, and such was not initiated. This Board is certainly mindful of the importance of the Claimant's rights to a fair and impartial investigation and appeal and find that, in this, and other issues raised by the Organization, the evidence indicates Claimant's rights were adequately protected and observed.

As a preliminary point, this Board must also note that all facts and/or lines of argument used by either party in their ex parte submissions which were not a part of the record as handled on property cannot be considered properly before this Board. Such is the case here with the monetary claim of the Organization which was never joined on property and by firmly established position of this Board and codified by Circular No. 1, cannot now be considered (Third Division Awards 21463, 22054, 247161.

As such, with substantial evidence to warrant conclusion of guilt, and no violation of due process, the only issue before this Board to be resolved is whether the Carrier has imposed reasonable discipline. This Board has emphasized in numerous prior Awards that the role of discipline is not only punitive, but that it should also create a corrective environment for **employees** (Third Division Awards 5372; 19037). Under the rule of progressive discipline this Board has **often** evaluated the transcript to determine that when severe discipline was imposed it was progressive, reasonable and nonarbitrary.

With respect to Carrier action in the instant case, a review of the record as handled on property does not provide any basis for this Board to determine that the severity of the penalty is warranted. As such, finding no evidence that the incident that occurred and for which Claimant was disciplined is anything other than his very first offense, and under the specific circumstances of this case, this Board finds the quantum of discipline to **be** unwarranted. Therefore, while not denigrating guilt, this Board rules that the Claimant's sixty (60) day suspension be reduced to a thirty (30) day suspension and that Claimant be reimbursed for the thirty (30) days he was suspended at his straight time rate of pay. Claimant will not receive compensation for trailer or overtime pay, since we find no merit to **such** a claim in these circumstances of guilt.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all **the evidence**, finds and holds:

That the parties waived oral hearing;

That the Carrier **and** the Employees involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.